

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
COLORADO RIVER BASIN REGION**

ADMINISTRATIVE CIVIL LIABILITY ORDER NO. R7-2007-0064
IN THE MATTER OF
APPLE CORE ENTERPRISES, INC.
APPLEBEE'S RESTAURANT
OWNER/OPERATOR OF
WASTEWATER TREATMENT AND DISPOSAL SYSTEMS
TOWN OF YUCCA VALLEY
SAN BERNARDINO COUNTY

This Order to assess Administrative Civil Liability (ACL), pursuant to California Water Code (CWC) Section 13350(e)(1), is issued to Apple Core Enterprises, Inc. (hereinafter Discharger) based on a finding of violations of Waste Discharge Requirements (WDRs) Board Order No. R7-2006-0030.

The Colorado River Basin Regional Water Quality Control Board (Regional Board) finds the following:

1. The Discharger owns and operates the Wastewater Treatment and Disposal Systems (hereafter referred to as "WWTF") serving its Applebee's Restaurant in the Town of Yucca Valley.
2. The WWTF consist of a grease interceptor, two primary treatment tanks, five aeration basins, and two fixed media activated sludge treatment units. Wastewater from the treatment system is discharged to six on-site seepage pits for disposal. WWTF has a design treatment and disposal capacity of 10,050 gallons per day (gpd).
3. The Discharger began discharges of wastes from its restaurant in December 2005, under coverage of General Waste Discharge Requirements Order No. 97-500.
4. The Discharger's discharge of wastes is taking place in the Warren Groundwater Basin, which is already adversely impacted by nitrates discharged from septic tank- leachfield systems in Yucca Valley.
5. On June 21, 2006, the Regional Board adopted WDRs Order No. R7-2006-0030 to govern the discharge from the WWTF. The Regional Board terminated the Discharger's coverage under Order No. 97-500 in July 2006.
6. WDRs Order No. R7-2006-0030 recognizes that proper operation and maintenance (O&M) of small advanced wastewater treatment systems, such as the Discharger's WWTF, are critical to their success in consistently producing high quality effluent; that it is the Discharger's responsibility to ensure that both short-term and long-term O&M needs are met; that failure to provide proper O&M of this facility may result in violations of WDRs and enforcement actions being taken against the Discharger for those violations; and that the Discharger had been experiencing O&M problems since it began discharging in December 2005.

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7. CWC Section 13350(a) states, in relevant part, that:

“Any person who...in violation of any waste discharge requirement, waiver condition, certification, or other order or prohibition issued, reissued, or amended by a regional board or the state board...discharges wastes...shall be liable civilly, and remedies may be proposed, in accordance with subdivision (d) or (e).”

8. CWC Section 13350(e)(1) states, in relevant part, that:

"(e) The state board or a regional board may impose civil liability administratively pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 either on a daily basis or on a per gallon basis, but not both...(1) The civil liability on a daily basis may not exceed five thousand dollars (\$5,000) for each day the violation occurs.”

Relevant Provisions of WDRs Order No. R7-2006-0030

9. Discharge Specification No. B.8 of WDRs Order No. R7-2006-0030 states, in part, that:

“WWTF effluent shall not exceed the following effluent limits:

Constituent	Units	Monthly Average	Weekly Average	Daily Maximum
BOD ₅ ¹	mg/L	30	45	65
Total Suspended Solids	mg/L	30	45	65
Nitrogen (as Total Nitrogen)	mg/L	10	15	20
Oil and Grease	mg/L	--	--	30
¹ 5-day biochemical oxygen demand at 20 °C.				

10. Provision No. E.2 of WDRs Order No. R7-2006-0030 states that:

“The Discharger shall comply with Monitoring and Reporting Program (MRP) No. R7-2006-0030, and future revisions thereto, as specified by the Regional Board's Executive Officer.”

11. Monitoring and reporting Program No. R7-2006-0030, under “SECONDARY EFFLUENT MONITORING DURING SYSTEM STARTUP” states that:

“A sampling station shall be established at the point of discharge from the FAST units (at the D-box). During the initial startup period, until consistent levels of plant performance have been established, the following monitoring schedule shall be in place:

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Constituents	Units	Type of Sample	Sampling Frequency	Reporting Frequency
pH	pH units	Grab	Weekly	Monthly
20° C BOD ₅	mg/L	Grab	Weekly	Monthly
Suspended Solids	mg/L	Grab	Weekly	Monthly
Settleable Solids	mg/L	Grab	Weekly	Monthly
Nitrite (NO ₂ -N) as Nitrogen	mg/L	Grab	Weekly	Monthly
Nitrate (NO ₃ -N) as Nitrogen	mg/L	Grab	Weekly	Monthly
Total Nitrogen	mg/L	Grab	Weekly	Monthly
Total Dissolved Solids	mg/L	Grab	Weekly	Monthly
Biocides / Disinfectants	Mg/L	Grab	Weekly	Monthly
VOCs ¹	µg/L ²	Grab	Monthly	Monthly
1 Volatile Organic Compounds testing is to be accomplished using the USEPA test methods 601 and 602 or 624				
2 Micrograms per liter				

12. Monitoring and reporting Program No. R7-2006-0030, under “SECONDARY EFFLUENT MONITORING” states that:

“After consistent levels of plant performance have been established, and after the Discharger has obtained written approval of the Regional Board Executive Officer, the following monitoring schedule shall be in place:

Constituents	Units	Type of Sample	Sampling Frequency ¹	Reporting Frequency
pH	pH units	Grab	Monthly	Quarterly
20° C BOD ₅	mg/L	Grab	Monthly	Quarterly
Suspended Solids	mg/L	Grab	Monthly	Quarterly
Settleable Solids	mg/L	Grab	Monthly	Quarterly
Nitrite (NO ₂ -N) as Nitrogen	mg/L	Grab	Monthly	Quarterly
Nitrate (NO ₃ -N) as Nitrogen	mg/L	Grab	Monthly	Quarterly
Total Nitrogen	mg/L	Grab	Monthly	Quarterly
Total Dissolved Solids	mg/L	Grab	Monthly	Quarterly
VOCs	µg/L	Grab	Annually	Annually
¹ When analysis show noncompliance with the limitations prescribed by Discharge Specification No. B.7, the Discharger shall increase the sampling frequency, for the constituents that are in noncompliance, to 1 sample per week, and continue sampling at that minimum frequency until either (a) the sampling shows compliance for two consecutive months or (b) it is notified by the Executive Officer that it can resume the normal sampling schedule.				

13. Provision No. E.8 of WDRs Order No. R7-2006-0030 states, in part, that:

“**[By July 21, 2006]**, the Discharger shall submit an engineering report pursuant to Section 13267 of the California Water Code. The report shall be prepared by a registered civil engineer experienced in the design of domestic wastewater treatment and disposal facilities, describe the as-built WWTF and disposal system, and shall provide the following...A description of the type and location of the flow metering instrumentation installed to meet

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compliance with the effluent flow limit and MRP No. R7-2006-0030...A copy of the Operation and Maintenance (O&M) Plan for the WWTF and subsurface disposal area....”

14. Provision No. E.9 of WDRs Order No. R7-2006-0030 states, in part, that:

“**By July 15, 2006**, the Discharger shall submit technical a report in the form of a Quality Assurance Project Plan (QAPP) to conduct and submit the results of a study to characterize the sources contributing to the Total Dissolved Solids (TDS) concentrations of the effluent. The report shall be submitted to the Regional Boards Executive Officer for approval and contain a proposed time schedule for implementation and quality assurance (QA) procedures to...Obtain representative samples and analyses of the restaurant's source water for general minerals...Identify and describe salt sources, processes, and operations in the restaurant that may or actually contribute to the increased TDS of the influent into the wastewater treatment plant...Obtain representative samples and analyses of the [restaurant's] sources, processes, and operations...[and] Compare the TDS of the effluent with the TDS of the source water.

15. Provision No. E.10 of WDRs Order No. R7-2006-0030 states, in part, that:

“Following completion of and based on the results of the study requested in [E.9, above], but **by no later than December 15, 2006**, the Discharger shall submit a technical report in the form of a Source Control Plan to enable the Regional Board to establish, if necessary, a TDS effluent limitation. The report shall identify and/or evaluate alternatives to control to the maximum extent practicable TDS sources processes, and operations in the restaurant. In evaluating alternatives, the report shall address/provide...The cost per pound of salt removed from the discharge of each alternative plan, for each source identified...Discharger's financial and technical capability to implement the alternatives identified for source control...Proposed alternative for source control and proposed value of the proposed incremental increase...[and] A justification for the proposed incremental increase.”

16. Provision No. E.12 of WDRs Order No. R7-2006-0030 states, in part, that:

“The Discharger shall, at all times, properly operate and maintain all systems and components of collection, treatment and control which are installed or used by the Discharger to achieve compliance with the conditions of this Board Order. Proper operation and maintenance includes effective performance, adequate process controls and appropriate quality assurance procedures. All systems both in service and reserved, shall be inspected and maintained on a regular basis. Records shall be kept of the inspection results and maintenance performed and made available to the Regional Board upon demand.”

Violations of WDRs during July 2006 through April 20, 2007

17. Self-monitoring data submitted by the Discharger show that the Discharger has been in chronic violation of the effluent limits for BOD and TSS; and in violation of the Nitrogen limits established by Discharge Specification B.8 of WDRs Order No. R7-2006-0030, cited above in Finding No. 9. As of April 20, 2007, the total number of violations for BOD, TSS, and nitrogen is three hundred seventy three (373). Attachment A, a part of this Order by reference, quantifies the violations.

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18. Because its WWTF has yet to establish consistent levels of performance, the Discharger has not obtained written approval from the Executive Officer to implement the reduced sampling and reporting frequency specified in Finding No. 12, above. Therefore, the monitoring frequency in effect is the one cited in Finding No. 11, above.
19. The July 2006 through April 2007 self-monitoring reports (SMRs) the Discharger submitted in response to MRP No. R7-2006-0030 were late or incomplete. The reports were late because the Discharger failed to submit them by the deadline specified in MRP No. R7-2006-0030. The reports were incomplete because the Discharger did not monitor at the frequency and for all of the parameters specified in MRP No. R7-2006-0030, cited in Finding No. 11, above. Every day a report is late counts as one violation of the WDRs Order No. R7-2006-0030. Each time the Discharger does not sample for a parameter at the specified frequency counts as a separate daily violation. Attachment B, which is incorporated in and made a part of this Administrative Civil Liability Order No. R7-2007-0064 by reference, shows the parameters for which the Discharger failed to monitor, as required by MRP No. R7-2006-0030. Attachment C, which is incorporated in and made a part of this Administrative Civil Liability Order No. R7-2007-0064 by reference, shows the number of days each report was late. Based on the Attachments, the total number of daily SMR violations as of April 20, 2007, is four hundred twenty (226 + 194 = 420).
20. The Discharger submitted the O&M report cited in Finding No. 13, above, on August 30, 2006. Therefore, the Discharger's report was 40 days late. Each day the report was late constitutes a daily violation of WDRs Order No. R7-2006-0030. The total number of days the Discharger violated Provision No. E.8 is forty (40), as shown in Attachment C.
21. As of April 20, 2007, the QAPP report cited in Finding No. 14, above, had been late two hundred seventy days (270), as shown in Attachment C. Each day the report is late constitutes a violation of WDRs Order No. R7-2006-0030.
22. Because the Discharger failed to submit the QAPP requested by the WDRs on time, it is also late in meeting the deadline specified by Provision No. E.10 of WDRs No. R7-2006-0030. Each day the Discharger is late in complying with the deadline counts as a violation of WDRs Order No. R7-2006-0030. As of April 20, 2007, the Discharger was one hundred twenty-six (126) days late in complying with Provision No. E.10.
23. Based on the effluent violations cited above in Finding No. 17, the monitoring and reporting violations cited above in Finding No. 19, and the QAPP violations cited above in Finding No. 21, the Discharger has been in chronic violation of Provision No. E.12 of WDRs Order No. R7-2006-0030, cited above in Finding No. 16, since July 2006. As of April 20, 2007, the number of daily violations of Provision No. E.12 was two hundred ninety-three (293).

Liability for July 2006 through April 20, 2007 Violations

24. On April 26, 2007, the Regional Board Assistant Executive Officer issued Administrative Civil Liability Complaint No. R7-2007-0057 against the Discharger for the violations cited above in Finding Nos. 17 and 19 through 23. As of the date of the Complaint, the maximum liability available to the Regional Board pursuant to CWC Section 13350(e)(1) was seven million, six hundred ten thousand dollars (\$7,610,000), which was calculated as follows:

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Violation	Reference Finding for Violation	Number of days in violation	Maximum Liability per violation (\$5000/day)
Effluent Limits	Finding No. 17	373	\$1,865,000
MRP (incomplete SMRs)	Finding No. 19	226	\$1,130,000
MRP (Late SMRs)	Finding No. 19	194	\$970,000
Provision E.8 (O&M Report)	Finding No. 20	40	\$200,000
Provision No. E.9 (QAPP for TDS)	Finding No. 21	270	\$1,350,000
Provision No. E.10 (implement QAPP)	Finding No. 22	126	\$630,000
Provision No. E.12 O&M Requirements	Finding No. 23	293	\$1,465,000
Maximum Liability Available (MLA) to Regional Board =			\$7,610,000

25. CWC Section 13327 states:

“In determining the amount of civil liability, the regional board, and the state board upon review of any order pursuant to Section 13320, shall take into consideration the nature, circumstance, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on ability to continue in business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters as justice may require.”

26. In consideration of the factors of CWC Section 13327, Complaint No. R7-2007-0057 proposed that the Discharger pay twenty-five thousand dollars (\$25,000) in liability for the violations. The Complaint also afforded the Discharger an opportunity to waive its right to a public hearing on the matter and spend up to ten thousand dollars (\$10,000) of the liability in a supplemental environmental project (SEP) that is consistent with the State Water Resources Control Board Water Quality Enforcement Policy.

27. In a letter dated May 14, 2007, the Discharger proposed to the Assistant Executive Officer to settle the Complaint by paying fifteen thousand dollars (\$15,000) in cash to the State and directing the remaining civil liability of ten thousand dollars (\$10,000) towards implementing a SEP. The Discharger waived its right to a public hearing on the matter. It also reported on May 17, 2007, by telephone, that its proposed SEP consists of organizing and conducting a public town hall meeting in the Town of Yucca Valley to outreach and educate interested parties and residents about the importance of protecting groundwater resources and advantages of using package wastewater treatment plants that provide tertiary treatment of domestic and municipal wastewater. It proposed to submit a complete SEP for Regional Board approval prior to implementation, within a 60-day timeframe from the date of the May 14, 2007 letter (i.e., by July 14, 2007).

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28. By letter dated May 21, 2007, the Assistant Executive Officer rescinded Complaint No. R7-2007-0057 and accepted the Discharger's proposal as a tentative settlement on behalf of the Regional Board. However, on June 7, 2007, the Discharger informed the Regional Board that instead of doing a SEP, it was paying the liability in full because it of deadlines constraints to develop and implement a SEP and its business needs.

Liability for April 21, 2007 through May 20, 2007 Violations

29. As of May 2007, following receipt of Complaint No. R7-2007-0057, the Discharger began to fully implement Monitoring and Reporting Program No. R7-2006-0030. From April 21 through April 30, 2007, however, it accrued 14 additional violations for failure to monitor its effluent at the frequency required by Monitoring and Reporting Program No. R7-2006-0030.
30. Monitoring data provided by the Discharger for the period covering the latter part of April 2007 shows that the quality of the discharge from the WWTF improved significantly, but still violated the effluent limits of WDRs Order No. R7-2006-0030. Based on the data, from April 21 through April 30, 2007, the Discharger accrued an additional 29 violations of WDRs Order No. R7-2006-0030. The available monitoring data for May 2007 show compliance with effluent limits.
31. On May 8, 2007, the Discharger also submitted a draft QAPP to address Provision No. E.9, cited above in Finding No. 14. Because the QAPP is incomplete, however, the Discharger has accrued an additional 30 violations of Provision No. E.9 of Order No. R7-2006-0030, cited above in Finding No. 14. Further, because the Discharger has not implemented an approved QAPP, it has also accrued an additional 30 violations of Provision No. E.10 of Order No. R7-2006-0030, cited above in Finding No. 15.
32. Based on Finding No. 30, above, the Discharger has accrued an additional one hundred three (103) violations of WDRs Order No. R7-2006-0030, which equates to an additional maximum liability of five hundred fifteen thousand dollars (\$515,000) pursuant to CWC Section 13350(e)(1). Therefore, should the Regional Board reject this proposed Order, the total maximum liability available to the Regional Board for all of the violations identified in this Order is eight million, one hundred twenty-five thousand dollars (\$7,610,000 plus \$515,000).
33. The Discharger and its representatives have cooperated with Regional Board staff to address the noncompliance issues at its WWTF and investigate complaints against the Discharger. It is also proposing to outreach to the community and other stakeholders affected by this matter. Further, the Discharger had also made the following WWTF modifications and installed the following procedures in an effort to bring the discharge from the WWTF in compliance with the effluent limits of WDRs Order No. R7-2006-0030:
 - a. Hired a California certified Grade III wastewater treatment plant operator to supervise the WWTF and ensure proper O&M, including timely and proper removal of WWTF sludge;
 - b. Fixed the master WWTF control panel, which also allows the Discharger to monitor and operate the package plant on-site or from a remote location via the Internet;
 - c. Fixed the control panel for the plant's aeration system to ensure compliance with effluent limits for BOD and TSS;
 - d. Corrected WWTF piping deficiencies;

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- e. Added screens to the package plant to further prevent gross solids from interfering with the plant's efficiency;
 - f. Replaced a defective sludge pump;
 - g. Adjusted the effluent distribution box between the plant's aeration tanks and Fast Units to ensure adequate mixing of kitchen and restrooms wastes.
34. In spite of the effluent noncompliance results for late April 2007 and compliance results for early May 2007, the Discharger has yet to establish consistent compliance with the effluent limits of WDRs Order No. R7-2006-0030. Also, the Discharger is still in violation of the deadline established in Provision No. E.10 (QAPP implementation) of WDRs Order No. R7-2006-0030. Consequently, Regional Board staff is also recommending the Regional Board adopt draft Cease and Desist Order No. R7-2007-0059 against the Discharger.
35. While the Discharger's package plant has failed to perform as expected, the effluent from the plant is still of better quality than the discharges of wastes from all other similar restaurant businesses in Yucca Valley, which are discharging restaurant wastewater from septic tanks to seepage pits and/or leachfields for disposal. Based on the foregoing, Finding Nos. 29, 32 to 34, and consistent with the civil liability amount factors prescribed in CWC Section 13327, which include taking into consideration any other matters as justice may require, the Assistant Executive Officer recommends that the Regional Board not assess additional liability for the additional violations identified in Finding No. 30, above.

Public Participation

36. The Regional Board has notified the Discharger and the general public of its intent to hold a hearing on this matter within 90 days from the date Complaint No. R7-2007-0057 was issued. Further, the Regional Board has notified them that should any interested person object to the proposed settlement, comments received on it are significant, and/or the Regional Board decides on its own motion to evaluate this matter in more detail, the Regional Board would reschedule the matter to a later date to hold a formal adjudicatory hearing on the matter. This would occur regardless of the fact that the Discharger waived its right to a hearing under CWC Section 13323(b).
37. The Regional Board heard and considered all comments pertaining to this matter in a public hearing.
38. Issuance of this Administrative Civil Liability Order to enforce CWC Division 7, Chapter 5, is exempt from the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), in accordance with Section 15321(a)(2), Title 14, California Code of Regulations.

IT IS HEREBY ORDERED, pursuant to CWC Section 13350(e)(1), the Discharger is assessed twenty-five thousand dollars (\$25,000) in ACL for the violations set forth in Attachment Nos. "A," "B," and "C," in accordance with the following:

1. The Discharger shall pay within thirty (30) days of the date this Order is adopted twenty five thousand dollars (\$25,000) by check made payable to the "State Water Resources [Waste Discharge Permit Fund]" and mailed to the address shown below:

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California Regional Water Quality Control Board
Colorado River Basin Region
73-720 Fred Waring Drive, Suite 100
Palm Desert, CA 92260

2. The assessment is due and payable and must be received by the Regional Board no later than thirty days after the date of issuance of this Order.
3. In the event that the Discharger fails to comply with the requirements of this Order, the Executive Officer is authorized to refer this matter to the Office of Attorney General for enforcement.
4. Payment of the Civil Liability does not absolve the Discharger of the need to comply with the above-referenced Waste Discharge Requirements, any other order of the Regional Board, or other applicable laws.
5. Pursuant to CWC § 13320, an aggrieved person may seek review of this Order by filing a petition with the State Water Resources Control Board (SWRCB) within 30 days of the Regional Board Hearing at which this Order was adopted. The petition must be sent to the SWRCB, PO Box 100, Sacramento, CA 95812-0100.

I, Robert Perdue, Executive Officer, do hereby certify the foregoing is a full, true and correct copy of an Order adopted by the California Regional Water Quality Control Board, Colorado River Basin Region, on June 26, 2007.



ROBERT PERDUE, Executive Officer